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**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION**

**UNITED STATES OF AMERICA,**

**Case No. 3:12-cv-02265-SI**

**Plaintiff,**

**v.**

**CITY OF PORTLAND,**

**Defendant.**

**UNITED STATES' MEMORANDUM IN  
RESPONSE TO THE CITY OF  
PORTLAND'S MEMORANDUM IN  
SUPPORT OF JOINT MOTION TO  
ENTER SETTLEMENT AGREEMENT  
AND CONDITIONALLY DISMISS  
ACTION**

**UNITED STATES' MEMORANDUM IN RESPONSE TO THE CITY OF PORTLAND'S  
MEMORANDUM IN SUPPORT**

This Court provided the Parties an opportunity to file briefs regarding the Court's authority to order the Parties to attend annual status conferences after conditionally dismissing the case pursuant to Federal Rule of Civil Procedure 41(a)(2). On June 24, 2014, the United States filed a brief in support of the Court's inherent authority to hold such status conferences, but nevertheless urged the Court to approve the Settlement Agreement, grant the pending Joint Motion (Dkt. 77), and conditionally dismiss the case. (United States' Memorandum in Support of Agreed Order, Dkt. 80). That same day, the City of Portland ("City") filed a brief arguing against the Court's authority to hold such status conferences, but also urged the Court to approve the Settlement Agreement, grant the pending Joint Motion (Dkt. 77), and conditionally dismiss the case. (City's Memorandum in Support of Joint Motion to Enter Settlement Agreement, Dkt. 82).

The United States contends that its initial memorandum fully responds to the legal arguments that the City raised regarding the Court's authority to order the Parties to attend status conferences following conditional dismissal. The City, however, raised one tangential issue in its Memorandum that, while not directly before the Court, the United States must address. While arguing that there are many practical and legal hurdles that make the prospect of continuing litigation complex, expensive, and subject to delay, the City stated that should this case proceed to trial, the United States would have to meet the heightened evidentiary burden of "deliberate indifference." (*See* City's Memorandum in Support of Joint Motion to Enter Settlement Agreement, Dkt. 82, at 8-9.) Although this evidentiary burden applies to plaintiffs who bring civil actions under 42 U.S.C. § 1983, *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), the United States' position is that it does not bear this evidentiary burden in cases brought under 42 U.S.C. § 14141. Because this issue is not presently before the Court, however, the United States will not expound on this issue at this time. The United States will gladly provide further briefing should the Court so desire.

Respectfully submitted this 2nd day of July, 2014.

For the United States:

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